

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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JEFFREY L. PELKEY,

Petitioner,

- vs -

9: 04-CV-0300  
(DNH)(GHL)

R. A. GIRDICH,

Respondent.

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APPEARANCES:

JEFFREY L. PELKEY

Petitioner, *pro se*

00-A-4448

Auburn Correctional Facility

P.O. Box 618

Auburn, New York 13024

HON. ANDREW M. CUOMO

Attorney General of the

State of New York

Attorney for Defendants

Executive Chambers

The Capitol

Albany, New York 13224

ROBIN A. FORSHAW, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

DECISION and ORDER

Petitioner Jeffrey L. Pelkey filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 challenging a judgment of conviction rendered on August 8, 2000, in Washington County Court wherein petitioner was convicted, after a guilty plea, of criminal possession of stolen property in the third degree, two counts of forgery in the second degree, two counts of criminal possession of stolen property in the fourth degree, and possession of burglar's tools. Dkt. No. 1. Petitioner was sentenced as a persistent felony offender to concurrent prison terms aggregating 20 years to life.

By Order of this Court filed November 10, 2004, the proceedings were stayed so that petitioner could exhaust his state court remedies relating to his *Apprendi* claim.¹ Dkt. No. 15. By letter dated April 3, 2006, petitioner advised the Court that his *Apprendi* claim was exhausted and requested the Court to “terminate the stay in the . . . matter and renew [his] petition raising the newly exhausted APPRENDI claim.” Dkt. No. 27. Petitioner advised the Court that his motion to vacate his judgment of conviction pursuant to Section 440.20 of New York's Criminal Procedure Law ("CPL") had been denied by the Appellate Division, Third Department. *Id.* Petitioner's request was granted and the stay was lifted. *Id.* Thereafter, petitioner advised the Court that he “appealed the adverse ruling of the appellate Court-Third Judicial department issued on March 2, 2006, concerning [his] CPL § 440 Motion to the New York Court of Appeals.” Dkt. No. 29.

Since petitioner is still pursuing exhaustion of his *Apprendi* claim in state court, the stay is hereby reinstated upon the terms and conditions stated in the decretal paragraphs of this Order.

THEREFORE, it is

ORDERED, that

1. The stay in this action is reinstated and further proceedings in this matter are hereby **stayed**, on the following terms and conditions: **Within thirty (30) days** of the resolution of petitioner's state court proceeding, petitioner must file an affidavit with this Court seeking to terminate the stay and renew his petition. Petitioner must also provide a copy of the state court decisions concerning the disposition of the newly exhausted claim;

¹ *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (Jun. 26, 2000).

2. Petitioner is to advise the Court, within sixty (60) days of the filing date of this Order, and, if a decision has not yet been reached in state court, every subsequent sixty (60) days thereafter, of the status of his state court proceeding(s);

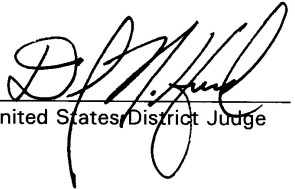
3. If petitioner fails to comply with the terms of this Order, the stay shall be lifted and the file in this matter will be returned to the Court for further consideration; and

4. The Clerk is directed to serve a copy of this Order upon the parties by regular mail.

IT IS SO ORDERED.

Dated: May 7, 2007

Utica, New York


United States District Judge